

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

76-1020

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

Appellee

Docket No. 76-1020

-against-

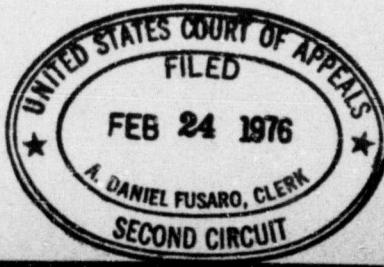
FRANKLIN WILLIAM GRASSI and
RAUL ARCE

Appellants

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BRIEF OF BEHALF OF APPELLANT
FRANKLIN WILLIAM GRASSI
PURSUANT TO ANDERS v. CALIFORNIA

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PRELIMINARY STATEMENT UNDER
SECOND CIRCUIT RULE 28

The judgment herein was rendered after a jury trial before Chief Judge JACOB MISHLER, in the United States District Court for the Eastern District of New York, which found the appellant FRANKLIN WILLIAM GRASSI guilty on Count 2 of the indictment and judgment of conviction was entered on January 9th, 1976.

STATEMENT OF THE ISSUE

The sole issue in this case is whether there are any non-frivolous issues on appeal.

STATEMENT OF THE CASE

The appellant GRASSI was indicted with JOSEPH LOUIS GARRO and RAUL ARCE on a two count indictment charging all three with bank robbery in the first count and armed bank robbery in the second count of the Astoria Federal Savings and Loan Association, 31-24 Ditmars Boulevard, Queens, New York on March 14th, 1975 in violation of Title 18, United States Code, Sections 2113 (a), 2113 (d) and 2.

Trial commenced on November 17, 1975. After a suppression hearing of an identification of RAUL ARCE, by one HENRY FAISON under United States v. Wade, 1967, 388 U.S. 218, in which Chief Judge MISHLER held the evidence admissible the trial commenced.

The first witness for the Government was JOSEPH LOUIS GARRO who testified that he, GRASSI and ARCE planned the robbery of the Astoria Federal Savings and Loan Association, stole an automobile from a woman in a Korvette

parking lot in West Hempstead, and using it as a getaway car, robbed the bank on March 14, 1975. He testified that they obtained approximately \$12,000.00 in cash and \$8,000.00 in bonds. The loot was brought to GRASSI'S apartment and divided among the three. He then testified that following this robbery all three defendants followed the same procedure as to the wearing of ski maks, and method used in the robbery of the Jamaica Savings Bank on April 21st, 1975. (TR. pp 202-207). After GARRO testified as to the second robbery, Chief Judge MISHLER gave a limiting instruction to the jury explaining that the defendants were only charged with robbing the Astoria Federal Savings and Loan, but that the evidence as to the Jamaica Savings Bank robbery was admitted for the sole purpose of showing the similarity of method between the 2 robberies by the 3 defendants.

An auditor of the bank testified as to the loss after the robbery and one MARGARET CAYOUETTTE, a teller of the Astoria Federal, testified as to the facts of the robbery on March 14, 1975. She couldn't identify either defendant. One ANTOINETTE DANISI testified as to the theft of her car by two men in the Korvette parking lot, but couldn't identify either defendant. HENRY FAISON, in charge of security at Korvette's testified as to the complaint made as to the theft by DANISI and then identified ARCE as one of two individuals he had observed near Korvette's the morning of March 13th where DANISI'S car was taken.

One LEON ROSENBERG testified that on March 14, 1975 he observed three men leaving the parking lot of the Astoria Federal in the car owned by DANISI immediately following the robbery. He supplied the license number of the car.

Two FBI agents took the stand. Agent ROBERT M. McCARTIN testifying as to the finding of the DANISI car after the holdup and finding a paper bag and coffee containers in the car. EVERETT JUSTICE, JR., an FBI fingerprint specialist testified that he found ARCE'S fingerprints on the paper bag and a coffee container found by Agent McCARTIN.

Neither defendant took the stand nor called any witnesses.

Both GRASSI and ARCE were found guilty on the 2nd count of the Indictment by the jury and each was sentenced to 15 years.

POSSIBLE ISSUES ON APPEAL

The only possible issue on appeal is whether or not the testimony of GARRO as to the participation of all 3 defendants in the second bank robbery subsequent to the one for which they were tried was error.

The Second Circuit has had a liberal rule in allowing the introduction of similar acts. In United States v. DeCicco, 435 F 2d 478, (2nd Cir.) 1970 evidence of similar acts was held admissible where used to prove intent. Intent had to be one of the issues of the case. In the instant case intent is of course in issue by the nature of the facts sought to be proven by the prosecution.

The element of intent must be a substantial issue in the trial to allow proof similar acts. United States v. Bretholz, 485 F 2d. 483 (2nd Cir.) 1973.

Whenever intent is an issue, such evidence would be admissible on the direct case of the prosecution. United States v. Cohen 489 F 2d 945, (2nd Cir.) 1973.

In the case of a bank robbery, as in any major violent crime, intent is always in issue, so evidence of the commission of a similar subsequent bank

robbery by the same persons who committed the act charged would be admissible. GARRO and the two defendants on trial were the participants in the subsequent crime, and the modus operandi of the subsequent crime was almost identical to the crime charged, so the evidence was properly admitted.

At the same time, after the testimony by GARRO of the second bank robbery by the same parties, following shortly after the crime for which they were on trial, Chief Judge MISHLER followed this by a limiting instruction to the jury. (Trans. p. 205). In this limiting instruction, the Court charged the jury that the defendants were only on trial for the Astoria Federal robbery of March 14, 1975. They were instructed that the evidence was admitted only to allow the jury, if they found that the method used in robbing the Astoria Federal was similar to that used in the robbery of the Jamaica Savings Bank, to decide whether these defendants also robbed the Astoria Federal.

There are no other questions of law which can be raised on appeal. All the other issues were questions of fact which were resolved against the appellant by the jury. There are no non-frivolous issues on which to appeal.

CONCLUSION

For the above stated reasons, there are no non-frivolous issues which can be raised on appeal. Accordingly it is respectfully requested that JOHN C. CORBETT be relieved as counsel on this appeal.

Respectfully submitted,

JOHN C. CORBETT
Attorney for Appellant GRASSI

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U.S. ATTORNEY

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